

# EXHIBIT 183

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:	*	
	*	
24 HOUR FITNESS	*	Chapter 11
WORLDWIDE, INC., ET AL.,	*	
Debtors.	*	Case No.: 20-11558 (KBO)
	*	
	*	(Jointly Administered)
	*	
24 HOUR FITNESS	*	
WORLDWIDE, INC.,	*	
Plaintiff,	*	
	*	
VS.	*	Adv. Proc. No. 20-51051 (KBO)
	*	
CONTINENTAL CASUALTY	*	
COMPANY, ET AL.,	*	
Defendants.	*	

**CONFIDENTIAL**

\*\*\*\*\*  
ORAL AND VIDEOTAPED 30(b)(6) DEPOSITION OF CONTINENTAL  
CASUALTY COMPANY THROUGH TRACY SCHOHN

CONFIDENTIAL

VOLUME 1

APRIL 14, 2022

(Reported Remotely)

\*\*\*\*\*

**NMA**  
COMPRESSED TRANSCRIPT

Page 2

1 ORAL AND VIDEOTAPED 30(b)(6) DEPOSITION of  
2 CONTINENTAL CASUALTY COMPANY through TRACY SCHOHN,  
3 produced as a witness at the instance of the Plaintiff,  
4 and remotely duly sworn, was taken in the above-styled  
5 and numbered cause on April 14, 2022, from 11:05 a.m. to  
6 3:07 p.m., before Carol Jenkins, CSR, RPR, CRR, in and  
7 for the State of Texas, reported by machine shorthand,  
8 with the Witness in Chicago, Illinois, pursuant to the  
9 Federal Rules of Civil Procedure, the Emergency Order  
10 Regarding the COVID-19 State of Disaster, and the  
11 provisions stated on the record or attached hereto.  
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14  
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17  
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19  
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21  
22  
23  
24  
25

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24  
25

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2 (Pages 2 to 5)



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1 rights letter.  
 2 Q. Is it -- where there's a quota share policy and  
 3 an adjuster like McLarens involved, is it typically the  
 4 process for McLarens or another adjuster in that role to  
 5 be responsible for preparing drafts of reservation of  
 6 rights letters?  
 7 A. They can, yeah. It's not unusual.  
 8 Q. You mentioned earlier that there were, I guess,  
 9 somewhere between 50 and 100 quota share COVID claims  
 10 that CNA was dealing with.  
 11 At around this particular time period in  
 12 March, so March 28th of 2020, can you estimate about how  
 13 many of those claims had been submitted to CNA already?  
 14 A. Of the COVID quota share claims?  
 15 Q. Yeah.  
 16 A. I have -- I don't know.  
 17 Q. All right. Where is your office located  
 18 personally?  
 19 A. So I -- I'm remote. I work from home.  
 20 Q. Okay. In March of 2020, were you working from  
 21 home?  
 22 A. Yes.  
 23 Q. And how about Mr. Bradley, do you know if he  
 24 was working from home in March of 2020?  
 25 A. I believe so, yes.

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1 Q. Do you know what is being referred to there as  
 2 a "described location"?  
 3 A. This should be one of the insured's locations.  
 4 Q. And why do you -- does the policy, the 24 Hour  
 5 Fitness policy, have a list of locations in it?  
 6 A. I don't believe so, no. The policy itself does  
 7 not.  
 8 Q. So why do you think that the reference to  
 9 described location refers to a 24 Hour Fitness location?  
 10 A. Because that's the -- those are the locations  
 11 they have an interest in.  
 12 Q. Does the policy define the term described  
 13 location anywhere?  
 14 MR. INGERMAN: You should -- you can look  
 15 at it, what he's shown, if you don't have a memory, if  
 16 you want to.  
 17 A. Oh, I'll look at it.  
 18 Q. (By Mr. Weiss) Okay. So the policy is  
 19 previously marked as Exhibit 14 if you want to take a  
 20 look at that.  
 21 (Schohn Exhibit 14 marked.)  
 22 Q. (By Mr. Weiss) And it's Bates numbered CNA  
 23 1150 to 1198.  
 24 THE VIDEOGRAPHER: Would you like me to  
 25 pull it up?

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1 Q. Did -- was that because of COVID, or was that  
 2 something that existed prior to COVID?  
 3 A. That existed prior to COVID.  
 4 Q. If you go back to the draft reservation of  
 5 rights letter that begins on CNA 53, which is part of  
 6 Exhibit 5.  
 7 A. Okay.  
 8 Q. And turn to page -- the second page of the  
 9 letter, page -- which is Bates numbered 54. It says:  
 10 The 24 Hour Fitness property policies provide all risk  
 11 coverage on all real and personal property subject to  
 12 stated exclusions. The policy is -- policy coverage is  
 13 also extended per endorsement No. 2 to "interruption by  
 14 communicable disease."  
 15 And then there is a -- then it quotes from  
 16 that endorsement No. 2.  
 17 Do you see that?  
 18 A. I see that.  
 19 Q. And then it says: The policy is extended to  
 20 cover the reasonable and necessary expenses incurred by  
 21 the insured to, (a), clean up, remove and dispose of  
 22 communicable diseases from insured property at a  
 23 described location.  
 24 Do you see that?  
 25 A. I see that.

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1 MR. WEISS: No, I don't think -- you don't  
 2 have to because the witness has it, but thank you.  
 3 Q. (By Mr. Weiss) I think the question was: Is  
 4 there anyplace in the policy where it defines what a  
 5 described location is?  
 6 A. I don't believe that it's in here, no.  
 7 Q. Going back to Exhibit 5, we were looking at  
 8 this draft reservation of rights letter and the  
 9 communicable disease endorsement language that was put  
 10 into the letter on page CNA 54. It talks -- it says --  
 11 there's a -- there's a section that says -- it says:  
 12 All coverage above must be directly resulting from  
 13 access being prohibited to a described location or any  
 14 portion thereof and, (a), due to the actual presence of  
 15 and the spread of communicable diseases at that  
 16 described location; and, (b), as a direct result of a  
 17 declaration by civil authority enforcing any law or  
 18 ordinance regulating communicable diseases.  
 19 Do you see that?  
 20 A. I see that.  
 21 Q. Okay. In -- in around -- in the spring of  
 22 2020, was CNA aware of any measures that were available  
 23 to test for the presence of COVID-19 at a business  
 24 location?  
 25 A. I'm not aware of any ability to test.

15 (Pages 54 to 57)

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1 Q. Did -- are you aware of whether CNA did any  
2 testening -- testing of any insured business locations  
3 for the presence of COVID-19 during the spring of 2020?

4 A. I'm not aware of any testing that was done by  
5 CNA.

6 Q. Are you aware of any testing done on behalf of  
7 CNA by any adjuster?

8 A. No.

9 Q. Are you aware of CNA conducting any testing at  
10 any time during the pandemic at insured business  
11 locations?

12 A. I am not aware of any testing done, no.

13 Q. Are you aware of CNA publishing any guidance  
14 for policyholders as to how they might test for the  
15 presence of COVID at an insured location?

16 A. I am not aware of any -- anything that was --  
17 any guidance that was given to anyone.

18 Q. Are you aware of any research that CNA has done  
19 regarding the ability to test for the presence of COVID  
20 at an insured location?

21 A. No, I'm not.

22 Q. Are you aware of any testing that CNA has ever  
23 done at an insured location for any communicable  
24 disease?

25 MR. INGERMAN: I'm going to -- I'm going

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1 to object as being beyond the scope of the 30(b)(6)  
2 notice. You're certainly free to ask her about what  
3 they did with respect to the 24 Hour claim. But any  
4 testing for any communicable disease, now we're beyond  
5 even COVID-19. So I'm going to object.

6 I'm going to allow you to answer it, but I  
7 -- I just hope we can stay closer to the 30(b)(6)  
8 notice.

9 A. I'm not aware of other testing for other  
10 communicable disease.

11 Q. (By Mr. Weiss) Okay. In connection with the  
12 24 Hour Fitness claim, what would CNA need from 24 Hour  
13 Fitness to demonstrate the actual presence of communic  
14 -- of COVID-19 at a described location?

15 MR. INGERMAN: Objection to the form.  
16 You can answer.

17 A. So in the context of this claim, what we were  
18 provided did not, you know, did not satisfy that. In  
19 terms of what would be required, I don't have an answer  
20 to that. I just know that what was provided did not  
21 demonstrate or did not meet that requirement.

22 Q. (By Mr. Weiss) If 24 Hour Fitness identified  
23 somebody who had tested positive with COVID-19 and they  
24 were present at an insured location, would that be  
25 sufficient to demonstrate the actual presence of -- of

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1 COVID-19 at the location?

2 MR. INGERMAN: Objection, speculation.

3 You can answer.

4 A. No, I don't think it would be -- it would  
5 demonstrate the presence --

6 Q. (By Mr. Weiss) Okay.

7 A. -- and certainly not the -- the spread.

8 Q. Okay. And why don't you think it would  
9 demonstrate the presence of COVID at an -- at a location  
10 if somebody with COVID was at the location?

11 MR. INGERMAN: Same objection.

12 A. I'm sorry. Could you repeat your question?

13 Q. (By Mr. Weiss) Sure.

14 MR. WEISS: Can we have that read back,  
15 please?

16 (Requested portion was read.)

17 A. I don't think we -- in the context of this  
18 claim, we were not presented with any evidence that  
19 somebody was on any of their locations that had -- we --  
20 nothing -- we weren't given anything that confirmed the  
21 presence at one of their locations.

22 Q. (By Mr. Weiss) And you're not able to tell us  
23 what 24 Hour Fitness would have need -- needed to show  
24 you to demonstrate satisfactorily to you that they had  
25 the presence of COVID at a location?

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1 MR. INGERMAN: Objection, asked and  
2 answered.

3 You can answer it again.

4 A. So, again, in the context of this claim, we  
5 don't know; but we know what was provided to us did not  
6 confirm the actual presence and spread of COVID-19.

7 Q. (By Mr. Weiss) So if you're -- if 24 Hour  
8 Fitness, your customer, came to you and said, okay,  
9 well, tell us what you need to see and we'll go out and  
10 find it, would you be able to tell them what you needed  
11 to see?

12 MR. INGERMAN: Objection. The third --  
13 that's the third time we've asked the question. So  
14 objection, asked and answered.

15 You can answer it one more time.

16 MR. WEISS: I don't think it was answered,  
17 but go -- you can go ahead and --

18 MR. INGERMAN: I think it was.

19 But you can answer it again.

20 A. Again, what was provided to us -- and we did  
21 have an RFI. And what was responded to did not confirm  
22 the actual presence or spread at a described location.

23 Q. (By Mr. Weiss) I know that you keep saying  
24 what was provided didn't demonstrate the actual spread.  
25 But my question was: What, in addition to what was

16 (Pages 58 to 61)

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1 provided, would they needed to have given you to satisfy  
 2 that?  
 3 A. And it --  
 4 MR. INGERMAN: Same objection.  
 5 You can answer it again. Go ahead.  
 6 A. And again, I don't know. But what we did get  
 7 did not satisfy that requirement.  
 8 Q. (By Mr. Weiss) Have in any of the other  
 9 COVID-19 claims that you've been involved with, has any  
 10 insured provided sufficient information to you to  
 11 satisfy CNA that they had the presence of COVID at a  
 12 location?  
 13 MR. INGERMAN: I'm going to object and  
 14 instruct the witness not to answer. I mean, we're not  
 15 here to talk about other claims. We negotiated that  
 16 actually out of the 30(b)(6) notice. So she's happy to  
 17 answer any questions about the adjustment and coverage  
 18 decisions as to the 24 Hour claim, but not as to other  
 19 claims.  
 20 Q. (By Mr. Weiss) All right. So on here, on --  
 21 for 24 Hour Fitness -- and 24 Hour Fitness is your  
 22 customer. And your customer is asking you, all right,  
 23 we've given you information and you're telling us it's  
 24 not enough, what more can we give you to satisfy you,  
 25 and you're not able to -- to tell us; is that right?

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1 was actually there.  
 2 Q. And what kind of support would you need?  
 3 A. I --  
 4 MR. INGERMAN: Objection, asked and  
 5 answered.  
 6 You can answer it again.  
 7 A. I don't know. But what was provided did not  
 8 meet this requirement.  
 9 Q. (By Mr. Weiss) Did anybody from -- did anyone  
 10 on behalf of CNA visit any of the 24 Hour Fitness  
 11 locations in connection with the COVID claim that 24  
 12 Hour Fitness submitted?  
 13 A. I don't believe so, no.  
 14 Q. Did anyone from McLarens visit any of the 24  
 15 Hour Fitness locations in connection with the 24 Hour  
 16 Fitness claim?  
 17 A. Not that I'm aware of.  
 18 Q. Did CNA instruct McLarens not to visit any of  
 19 the 24 Hour Fitness locations?  
 20 A. Not that I'm aware of.  
 21 Q. Did -- are you aware of any of the other  
 22 insurers instructing McLarens not to visit any 24 Hour  
 23 Fitness location in connection with this claim?  
 24 A. Not that I'm aware of.  
 25 Q. Do you agree that CNA has the right and ability

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1 MR. INGERMAN: Objection, asked and  
 2 answered.  
 3 You can answer it again.  
 4 A. Again, we did ask through our RFIs. And I -- I  
 5 believe not all those were answered. But the  
 6 information that was provided, we reviewed, and this  
 7 requirement was not met. There was no actual presence  
 8 or spread at their locations.  
 9 Q. (By Mr. Weiss) Do you recall that 24 Hour  
 10 Fitness identified several locations where they said  
 11 that there were individuals who had COVID-19 who were  
 12 present?  
 13 MR. INGERMAN: Objection to the form of  
 14 the question.  
 15 You can answer it.  
 16 A. I -- I don't believe that there was  
 17 confirmation that any of those -- that there was actual  
 18 presence at the location. It was, you know, from what  
 19 we can tell, it was employees or customers who may have  
 20 been exposed or may have tested positive. But again, it  
 21 doesn't correlate to the actual presence and spread at  
 22 their location.  
 23 Q. (By Mr. Weiss) Why doesn't that correlate to  
 24 the actual presence and spread at the location?  
 25 A. So, again, we have no support to show that it

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1 to visit insured locations that are subject of a claim?  
 2 MR. INGERMAN: I'm going to object to the  
 3 form of the question.  
 4 You can answer it.  
 5 A. Yes.  
 6 Q. (By Mr. Weiss) Okay. So, for example, and CNA  
 7 does, in fact, send adjusters out to visit loss  
 8 locations in investigating property claims; is that  
 9 right?  
 10 A. Yes.  
 11 Q. Right. So if there's a fire, you might send  
 12 somebody out to look at the fire damage, right?  
 13 A. Correct. Not typical with our quota share  
 14 claims or the market share claims, but with our regular  
 15 claims, yes.  
 16 Q. So on a quota share claim, you might -- the  
 17 adjuster might send somebody out, correct?  
 18 A. The market adjuster?  
 19 Q. Yes.  
 20 A. Yes.  
 21 Q. And if there's smoke damage on a -- involved in  
 22 a claim, the market adjuster might send somebody out to  
 23 assess that, correct?  
 24 A. Potentially, yes.  
 25 Q. All right. So there wasn't anything with

17 (Pages 62 to 65)



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1 A. No.

2 Q. Did you -- did the topic of the 24 Hour Fitness

3 bankruptcy come up in that video call with Mr. Bradley

4 that we were talking about a bit ago?

5 A. I believe only that they filed bankruptcy early

6 on.

7 Q. All right. Let's look at what was premarked as

8 Exhibit 20.

9 (Schohn Exhibit 20 marked.)

10 A. This is No. 7?

11 Q. (By Mr. Weiss) Yes, the seventh McLarens

12 report dated June 22nd, 2020; and the Bates No. is

13 CNA 546 to CNA 560.

14 Have you seen this report prior to

15 preparing for your deposition?

16 A. No.

17 Q. And then if you turn to page 547, do you see

18 that in the McLarens report, they're reporting that they

19 had received a response from 24 Hour Fitness to the

20 additional questions that had been posted -- posed

21 recently?

22 A. I see that.

23 Q. Okay. Were you aware of the responses to the

24 questions that had been provided by 24 Hour Fitness

25 prior to preparing for the deposition and looking at the

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1 A. I know there was a follow-up list of questions.

2 I'm not sure what report it was in, but I don't believe

3 we received a response to that. But I would assume

4 everything was included in the suit.

5 Q. Okay. Let's look at the next one, which was

6 premarked as Exhibit 21. This will be the eighth

7 McLarens report.

8 (Schohn Exhibit 21 marked.)

9 Q. (By Mr. Weiss) And it's Bates numbered CNA 561

10 to 583 dated September 3rd, 2020.

11 A. Okay.

12 Q. And on page 562, Mr. Allen wrote that pursuant

13 to insurer's instructions, they had forwarded two

14 letters to 24 Hour Fitness, one was a denial from Sampo

15 because of its communicable or infectious disease

16 exclusion. And the second letter is a reservation of

17 rights letter to the insured requesting additional

18 documentation relating to the interruption by a

19 communicable disease endorsement.

20 And then if you turn to page, let's see,

21 579, there's a September 2nd letter from McLarens to Mr.

22 Gottlieb at 24 Hour Fitness.

23 Do you see that?

24 A. Yes.

25 Q. Okay. Is this the -- are these -- are the

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1 documents?

2 A. No, I was not.

3 Q. When did CNA make the determination that 24

4 Hour Fitness had not provided sufficient information to

5 establish coverage for its claim?

6 A. Are you asking when we developed a coverage

7 opinion?

8 Q. Right. When -- because you testified earlier

9 that information that 24 Hour Fitness had provided was

10 not sufficient to establish that, for example, that the

11 communicable disease endorsement is applicable. And so

12 my question is: When did those -- when did that

13 coverage determination get made?

14 A. So our coverage determination was basically our

15 -- the answer to the -- the suit. So that's when that

16 was made in the suit responses.

17 Q. Okay. Prior to the response to the lawsuit,

18 had Mr. Bradley formulated any preliminary opinion after

19 reviewing all the information that 24 Hour Fitness had

20 provided as to whether there might be coverage for the

21 claim?

22 A. No, not that I'm aware of. But I know that we

23 were still waiting for some more information.

24 Q. As you sit here, do you know what the

25 additional information was that you were waiting for?

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1 information requests in this letter, the information

2 requests that you're referring to that you were waiting

3 for responses from or to?

4 A. I believe this was the last one, yeah.

5 Q. All right. Was -- did CNA have any role in the

6 drafting of this September 2nd, 2020 letter?

7 A. I don't know.

8 Q. Had the insureds already retained coverage

9 counsel at the time that this letter had been sent?

10 A. I don't believe we had at that time. I'm not

11 sure if we had at that time.

12 Q. And had -- were you aware of the September 2nd,

13 2020 letter that had been sent to 24 Hour Fitness prior

14 to the time that you were preparing for your deposition?

15 A. No, I wasn't aware.

16 Q. And then the next premarked exhibit was 22, and

17 that's the ninth report from McLarens dated

18 October 29th, 2020.

19 (Schohn Exhibit 22 marked.)

20 Q. (By Mr. Weiss) And that's Bates numbered 683

21 to 690.

22 Do you have that in front of you?

23 A. I do.

24 Q. Were you aware of this report prior to the time

25 that you were preparing for your deposition?

29 (Pages 110 to 113)



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1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE DISTRICT OF DELAWARE  
3 IN RE: \*  
4 24 HOUR FITNESS \* Chapter 11  
5 WORLDWIDE, INC., ET AL., \*  
6 Debtors. \* Case No.: 20-11558 (KBO)  
7 \* (Jointly Administered)  
8 24 HOUR FITNESS \*  
9 WORLDWIDE, INC., \*  
10 Plaintiff, \*  
11 VS. \* Adv. Proc. No. 20-51051 (KBO)  
12 CONTINENTAL CASUALTY \*  
13 COMPANY, ET AL., \*  
14 Defendants. \*  
15 REPORTER'S CERTIFICATE  
16 DEPOSITION OF TRACY SCHOHN  
17 APRIL 14, 2022  
18 I, CAROL JENKINS, Certified Shorthand  
19 Reporter in and for the State of Texas, hereby certify  
20 that this transcript is a true record of the testimony  
21 given by the witness named herein, after said witness  
22 was duly sworn by me.  
23 I further certify that the deposition  
24 transcript was submitted on \_\_\_\_\_,  
25 \_\_\_\_\_ to the witness or to the attorney for the  
witness for examination, signature, and return to me by \_\_\_\_\_.

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1 I further certify the amount of time used  
2 by each party at the deposition is as follows:  
3 Mr. David E. Weiss - (03h28m)  
4 Mr. Brett Ingerman - (00h00m)  
5 Ms. Ferdusi Chowdhury - (00h00m)  
6 Ms. Elizabeth Brockman - (00h00m)  
7 Ms. Marlie McDonnell - (00h00m)  
8 Mr. James Bauer - (00h00m)  
9 Mr. Joel L. McNabney - (00h00m)  
10 Ms. Elizabeth Kniffen - (00h00m)  
11 I further certify that I am neither  
12 attorney nor counsel for, related to, nor employed by  
13 any of the parties to the action in which this testimony  
14 was taken. Further, I am not a relative or employee of  
15 any attorney of record in this cause, nor do I have a  
16 financial interest in the action.  
17 SUBSCRIBED AND SWORN TO by the undersigned  
18 on this the 21st day of April, 2022.  
19  
20  
21  
22 CAROL JENKINS, CSR, RPR, CRR  
23 Certificate No. 2660  
24 Date of Expiration: 8/31/2023  
25 Nell McCallum & Associates, Inc.  
Firm Registration No. 10095  
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Houston, Texas 77007  
713.861.0203

1 I further certify the amount of time used  
2 by each party at the deposition is as follows:

3 Mr. David E. Weiss - (03h28m)

4 Mr. Brett Ingerman - (00h00m)

5 Ms. Ferdusi Chowdhury - (00h00m)

6 Ms. Elizabeth Brockman - (00h00m)

7 Ms. Marlie McDonnell - (00h00m)

8 Mr. James Bauer - (00h00m)

9 Mr. Joel L. McNabney - (00h00m)

10 Ms. Elizabeth Kniffen - (00h00m)

11 I further certify that I am neither  
12 attorney nor counsel for, related to, nor employed by  
13 any of the parties to the action in which this testimony  
14 was taken. Further, I am not a relative or employee of  
15 any attorney of record in this cause, nor do I have a  
16 financial interest in the action.

17 SUBSCRIBED AND SWORN TO by the undersigned  
18 on this the 21st day of April, 2022.

19  
20  
21 

22 CAROL JENKINS, CSR, RPR, CRR  
23 Certificate No. 2660  
24 Date of Expiration: 8/31/2023  
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